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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:)	
)	
PETITION TO AMEND)	
RULE 123 OF THE RULES OF)	Supreme Court No. R-15-0027
THE SUPREME COURT)	
)	PETITIONER'S REPLY
_____)	

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, Petitioner respectfully files this Reply addressing the one comment received in this matter. Petitioner also modifies his proposal relating to Rule 123(g)(5) based on concerns received from members of the superior court community, but not formally filed with the Court, as described below.

1. Amendment to Rule 123(e)(2) limiting access to job applicant records

One comment was filed on petitioner's proposed amendment to Rule 123(e)(2) relating to job applicant records. Petitioner does not agree that job applicants themselves should be allowed to inspect any records filed or created in

filling a vacancy. Petitioner believes the privacy interests of the other applicants and their present and former employers and references should outweigh the speculative interest of an unsuccessful applicant who may, rightly or wrongly, suspect he or she was the victim of unlawful discrimination. Additionally, the Equal Employment Opportunity Commission (EEOC) provides a venue in which court employers respond to such claims without litigation.

2. Amendment to Rule 123(g)(5) establishing deadlines for removing online access to case documents and information

The current rule gives the records custodian the discretion to delete records published on a court website after 25 years, for those case types that are subject to retention for more than 25 years. The proposed amendment would require removal of these records from court websites after 25 years. Although no formal comments on this proposal have been filed, the amendment has received some negative reaction from the superior court community about the logistics of implementing mandatory removal after 25 years for superior court case records.

The proposed amendment was intended to promote statewide consistency on courts' case lookup websites, which was the overarching goal of the policies reported to the Judicial Council by the Electronic Records Retention and Destruction Advisory Committee in December 2013. The Committee recommended that the length of time the courts should publish case records online

should be consistent for each level of court across the state. For limited jurisdiction case records, the committee recommended that the records be removed from online access by the public when the retention period established for the case file ends. The Committee also recommended the adoption of separate schedules for (1) retention of paper case records, (2) records displayed on public access websites maintained by courts, and (3) electronic records maintained in case management systems (CMS) and document management systems (EDMS).

Implementation of the Electronic Records Retention Committee's recommendations was handed off to two other committees that updated the records retention and disposition schedules for superior courts and limited jurisdiction courts, ACJA §§ 3-402 and 4-302, respectively. The updated Limited Jurisdiction Courts Records Retention and Disposition Schedule now identifies the three categories of retention for each case type: (1) the first category addresses how long the paper case file must be kept at the court, destruction after this time period is discretionary; (2) the second category addresses how long the electronic case documents and case management system information are to be available to the public online; and (3) the third category addresses how long CMS and EDMS records are to be retained by the court before they are deleted. For each case type, the schedule establishes the same retention periods for the first two categories. However, for criminal, traffic, and parking cases, the CMS and EDMS records

retention periods are longer than the other two categories. The schedule does not state whether removal of records from public websites is mandatory or discretionary, but does state that, at the end of the applicable retention period, “the records manager *must destroy* electronic case files and case data,” ACJA § 4-302(B)(1). Limited Jurisdiction court records are not transferred to State Archives, for permanent preservation unless they are determined to be historically significant.

Unlike the limited jurisdiction courts, the majority of cases heard in superior court (civil, probate, family, and criminal cases) are retained permanently. The superior court schedule establishes two categories of retention by case type. The first category identifies how long the records are kept at the clerk’s office before they are transferred to State Archives. The second category specifies either a permanent retention period or, as is the case with juvenile dependency and delinquency, a shorter period. The new superior court schedule, adopted by the Court in 2014, requires clerks to delete CMS and EDMS records for case types *not* designated for permanent retention, however, most superior court case records are permanent. The schedule does not identify a retention period for online access to superior court case records by the public. The current policy that addresses how long these records should be kept on a court’s public access website, Rule 123(g)(5)(B), provides for discretionary removal of the records.

In the coming months, a new *ad hoc* Committee on Time Periods for Remote Access to Superior Court Records will consider whether permanent superior court records should be required to be removed from public access websites after 25 years. The committee is expected to report its recommendations to the Arizona Judicial Council in December, and to file a new Rule 28 petition in January 2016 to seek adoption of whatever policy is ultimately approved by the Council.

In light of the concern expressed and the referral to the new committee, Petitioner requests that the Court make no change to subsection 123(g)(5)(B).

RESPECTFULLY SUBMITTED this ____ day of July, 2015.

By /s/
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